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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	PATENT
	:	
AXEL SCHULTE	:	Art Unit: 1771
	:	
Serial No.: 09/601,280	:	Examiner: C. A. JUSKA
	:	
Filed: July 31, 2000	:	
	:	
For: FLOOR CARPET INSTALLING	:	
SYSTEM	:	

SECOND RESPONSE


Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to the October 23, 2006 Response replying to the October 10, 2006 Notice of Non-Compliant Appeal Brief in connection with the above-identified application, enclosed is a copy of the Third Conditional Brief on Appeal as filed on June 30, 2006.

In a voice mail message to the undersigned, Examiner Juska indicated that the refilling of the enclosed brief, in combination with the October 23, 2006 Response (copy enclosed), constituted a response sufficient to toll the due date for responding to the October 10, 2006 Notice.

Respectfully Submitted,


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Dated: November 8, 2006

40098



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	PATENT
AXEL SCHULTE	:	Art Unit: 1771
Serial No.: 09/601,280	:	Examiner: C. A. JUSKA
Filed: July 31, 2000	:	
For: FLOOR CARPET INSTALLING SYSTEM	:	

RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication responds to the October 10, 2006 Notice of Non-Compliant Appeal Brief in connection with the above-identified application, and requests reconsideration since the specification and claims of the original International Application must be modified by the Article 34 Amendments prior to comparison with the substitute specification, as specifically required by the April 15, 2005 Decision on applicant's petition.

The Third Conditional Brief on Appeal is alleged to be non-compliant on the ground that the Brief and the June 30, 2006 Amendments do not conform to the translation of the specification and claims refiled on March 18, 2005 (such translations being originally filed on December 16, 2004). Copies of the allegedly currently pending specification and claims are attached to the Notice.

However, the original International specification and claims were modified under Article 34 during preliminary examination of the International Application. A translation of the annexes to the International Preliminary Examination Report was also refiled on March 18, 2005, which annexes modify the original translations of the specification and claims of the International Application. The translation of those annexes is contained in the U.S. Patent and Trademark Office image file in the 24 page Miscellaneous Communication Letter of March 18, 2005. A convenience copy of those annexes is appended hereto.

The last paragraph on page 2 of the April 15, 2005 Decision states:

With the 18 March 2005 response, applicant has filed an acceptable English translation of the international application as required by 35 U.S.C. 371(c)(2) and the processing fee for filing the English translation of the international application later than 30 months from the priority date. Furthermore, applicant has submitted an English translation of the annexes to the international preliminary examination report (identified as AMENDED SHEETS/IPEA/EP) consisting of four sheets of description and two sheets of description [claims]. These translated amended sheets should [be] replace the translated sheets of the original international application. Therefore, any further amendments to the application[s] would have to amend the international application with the translated annexes entered. Accordingly, a new Notification of Acceptance of Application under 35 U.S.C. 371 and 37 C.F.R. 1.495 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 102(e) date of 18 March 2005 will be mailed to applicant.

(Emphasis added)

This clear and unequivocal statement in that Decision requires entry of the annexes prior to any amendment of the specification and/or claims, and that any amendment must be compared to the translation of the International application as modified by the annexes. See also M.P.E.P.

§ 1893.01(a)(3).

The comparisons submitted by applicant therefore are in compliance with the Decision, such that the substitute specification and claims submitted with the June 30, 2006 Amendment are in proper form for consideration on their merits and inclusion in the Brief on Appeal, rendering the June 30, 2006 Brief compliant.

The undersigned hereby makes of record telephone interviews with Examiner Juska, her supervisor, Mr. Morris, and Mr. L. Smith of the PCT legal branch regarding the above issues on October 17 and 18, 2006. No resolution was reaching during those telephone interviews.

Prompt and favorable action is solicited.

Respectfully Submitted,



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Dated: October 23, 2006

Gottlieb Binder GmbH & Co., 71088 Holzgerlingen

Floor Carpet Installing System

The invention relates to a floor carpet installing system with a carpet which forms the usable surface with its front side, a non-looped material which is cemented to the floor surface, and an anchoring means which has projecting interlocking elements on both sides and which on the one hand interlock with the reverse side of the carpet which is formed from non-looped material and which faces away from the pile side and on the other hand with the non-looped material on the floor surface.

A carpet installation system of this type is already known from document FR 2 282 999 A. In the known system there are strips which are aligned as anchoring means to the carpet edges and which have projecting interlocking elements on both sides in the form of bristles which are inclined toward the plane of the carpet, these bristles being inclined respectively on one side and the other side in directions opposite one another. This opposite inclination of the bristles upon interlocking with the non-looped reverse side of the carpet and the non-looped material attached to the floor is intended to prevent displacement along the plane of the carpet. But it has been found that this type of anchoring does not ensure a reliable enough bond. In this way, during use the formation of bubbles and ripples can occur, in particular under higher stresses, for example by moving heavy pieces of furniture, there is the danger of major damage.

AMENDED SHEET
IPEA/EP

The object of the invention is to devise a carpet installation system which is accordingly characterized by improved characteristics of use.

In a carpet installation system of the type mentioned in the foregoing, this object is attained as claimed in the invention in that the anchoring means is a microfastener element with interlocking elements in the form of stalks with end-side thickened areas, and that the interlocking elements on the two sides of the adhesive fastener element have different shapes and/or dimension and/or mutual distances from one another.

The anchoring as claimed in the invention by means of double-sided microfastener with an adhesive fastener element, which has interlocking elements located on both sides in the form of stalks with end-side thickened areas, which interlock on each side with non-looped material, results in several advantages. On the one hand, this type of interlocking yields an especially reliable connection with regard to relative movements along the plane of the carpet. On the other hand, because the adhesive fastener element is not cemented directly to the floor surface, but interlocks with the likewise non-looped material which is attached to the floor surface, the danger is avoided that shrinkage or ripples, which occur when the floor surface ages or sets, could lead to detachment of the anchoring, because the non-looped material which is on the floor surface forms a compensation layer with a certain compliance. In addition, this layer which is attached to the floor surface also acts to dampen the noise of walking.

Another advantage is that by choosing the dimensions, the geometry and/or the choice of the number of interlocking elements per unit of area, the interlocking action on the two sides of the adhesive fastener element can be appropriately selected. Thus, for example, the adhesive action on the bottom side of the adhesive fastener element which faces the floor surface can be selected to be stronger than the adhesive action relative to the non-looped material on the reverse side of the carpet. When the carpet is lifted, which is possible in interlocking with the non-looped material on the reverse side of the carpet by overcoming the adhesive force, the adhesive fastener

element in this case remains interlocked to the floor-side non-looped material so that after the carpet is lifted re-installation is possible without additional measures.

For the installation system as claimed in the invention a microfastener element is suited which is configured similarly to the element known from DE 196 46 318 A1, but differs from it in that the corresponding interlocking elements are molded not only on the front side, but also on the reverse side of the backing.

Depending on the product base of the carpet which is to be installed, i.e., depending on the structure of the reverse side, a microfastener can be used with the thickness of the backing of the interlocking elements from 0.1 to 0.5 mm and with 20 to 600 interlocking elements per cm² on each side.

The thickened areas of the stalks of the interlocking elements can have the shape of mushroom heads or plate-shaped heads, the heads on their top side preferably being provided with concave recesses. A process for especially simple production of microfastener elements with these interlocking elements in a one-sided arrangement is proposed in German Patent Application 198 28 856.5.

When using interlocking elements which have recesses on the top side of the heads, the recesses of the heads can be provided with an adhesive which effects additional bonding to the reverse side of the carpet and/or the floor-side material, for example by spread coating.

Textile materials in the form of felts and nonwovens as well as loose leno or smooth knit fabrics and non-woven textiles (nonwoven materials) can be provided as the reverse side of the carpet and as the non-looped material which is cemented to the floor.

The invention will be described in greater detail below with the aid of the drawings in which:

- FIG. 1 shows a schematically simplified and broken away section of the components of the floor carpet installation system as claimed in the invention;
- FIG. 2 shows a perspective, highly enlarged view of a double-sided microfastener element, a single interlocking element being shown even more enlarged and cutaway, and
- FIG. 3 shows a broken-away top view drawn in approximately natural size of the non-looped reverse side of the carpet from FIG. 1.

FIG. 1 shows in an enlarged simplified schematic a section of a carpet with pile elements 1 of the conventional type, which extend up from a connecting layer 3 and which form the pile side of the carpet which is used as the usable surface. The reverse side 5 facing away from the pile side is formed by a non-looped material. Materials can be used for this purpose, which impart to the carpet structure a specific stiffness, directional stability and cut resistance. For this purpose, they can be felts or nonwovens which acquire their mechanical coherence by tufting processes and are cemented to the connecting layer 3 of the carpet. Loose leno or smooth right/left knits and other so-called nonwoven materials are also suitable for this purpose.

FIG. 2 shows a section of a strip of a microfastener element 7 similar to the one shown in DE 196 46 318 A1. The thermoplastic (for example, polyolefins or blends of polyamides are possible) strip formed in the gap between an upper and a lower forming tool forms a film-like backing 9 with stalks 11 which project from its top side and bottom side. The stalks 11, which project from the top side of the backing 9 and which have thickened ends which

Claims

1. Floor carpet installing system with a carpet which forms the usable surface with its pile side (1), non-looped material (21), which is cemented to the floor surface (25), and an anchoring means (7) which has projecting interlocking elements (11) on both sides and which on the one hand interlock with the reverse side (5) of the carpet which is formed from non-looped material and which faces away from the pile side (1) and on the other hand with the non-looped material (21) on the floor surface (25), characterized in that the anchoring means is a microfastener element (7) with interlocking elements made in the form of stalks (11) with end-side thickened areas (13), and in that the interlocking elements (11, 13) on the two sides of the adhesive fastener element (7) have different shapes and/or dimension and/or mutual distances from one another.
2. The carpet installation system as claimed in claim 1, wherein the thickened areas of the stalks (11) of the interlocking elements have the shape of mushroom heads or plate-shaped heads (13).
3. The carpet installation system as claimed in claim 2, wherein the heads (13) which form the thickened areas are provided on their top side with concave depressions (15).
4. The carpet installation system as claimed in claim 3, wherein the depressions (15) of the heads (13) on at least one side of the adhesive fastener element (7) are provided with an adhesive (17) which effects an additional bond to the reverse side (5) of the carpet and/or the material (21) on the floor surface (25).

5. The carpet installation system as claimed in claim 4, wherein there is an acrylate-based adhesive (17).
6. The carpet installation system as claimed in one of claims 1 to 5, wherein felts or nonwovens are provided as the non-looped textile material (5, 21).
7. The carpet installation system as claimed in one of claims 1 to 5, wherein loose leno or smooth knit fabrics are provided as non-looped textile material (5, 21).
8. The carpet installation system as claimed in one of claims 1 to 5, wherein the non-woven textiles such as stitch-bonded materials, needled felt, or tufting are provided as non-looped textile material (5, 21).
9. The carpet installation system as claimed in one of claims 6 to 8, wherein at least the non-looped material (21) provided on the floor surface (25) has properties of damping the noise of walking.



In re Application of:

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Serial No.: 09/601,280

Examiner: **C. A. JUSKA**

Filed: **July 31, 2000**

Appeal No. _____

For: **FLOOR CARPET INSTALLING
SYSTEM**

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APPENDIX A - COPY OF CLAIMS ON APPEAL

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APPENDIX C - RELATED PROCEEDINGS

40098

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

AXEL SCHULTE

Serial No.: **09/601,280**

Filed: **July 31, 2000**

For: **FLOOR CARPET INSTALLING
SYSTEM**

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Art Unit: **1771**

Examiner: **C. A. JUSKA**

Appeal No. _____

**THIRD CONDITIONAL APPELLANT'S
BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192**

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the December 10, 2004 Notification of Non-Compliant Appeal brief and for the appeal to the Board of Patent Appeals and Interferences from the decision dated March 19, 2003 of the Primary Examiner finally rejecting claims 10-25 and 27 in connection with the above-identified application, Applicant-Appellant submits the following brief in accordance with 37 C.F.R. § 41.37.

1. Real Party in Interest

The inventor, Axel Schulte, assigned his entire right, title and interest in the patent application to Gottlieb Binder GmbH & Co. of Holzgerlingen, Germany.

2. Related Appeals and Interferences

There are no other related appeals or interferences known to Appellant, Appellant's legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

3. Status of Claims

Claims 1-9 and 26 are cancelled. Claims 10-25 and 27 are pending, are rejected, and are on appeal.

4. Status of Amendments

Two Amendments were filed subsequent to the March 27, 2003 Office Action. The June 19, 2003 Amendment was refused entry pursuant to September 25, 2003 Advisory Action. The September 17, 2003 Amendment was entered pursuant to the October 21, 2003 Advisory Action.

5. Summary of the Invention

Independent claim 10 relates a floor carpet installation system comprising a carpet 1 and 3 (p. 6, lines 16-18; Fig. 1), a floor loopless material 21 (p. 6, lines 18-19; Fig. 1) and a micro-adhesive closing element 7 (p. 7, lines 6-7; Fig. 1). The carpet has a nap side forming its usable surface and has a backside formed of a carpet loopless material 5 opposite the nap side (p. 6, lines 15-19; Fig. 1). The floor loopless material is fixable to a floor surface 25 (p. 3, line 15; Fig. 1). The micro-adhesive closing element 7 has opposite carpet and floor surfaces, with each surface having protruding interlocking elements 11 (p. 7, lines 6-11, Fig. 1). Elements 11 on the

carpet and floor surfaces of the closing element interlock with the carpet and floor loopless materials, respectively (p. 7, lines 11-14; Fig. 1). The interlocking elements are configured as fingers with thicknesses 13 at their free ends (p. 7, lines 6-14; Fig. 1). The interlocking elements on the carpet surface have different shapes, different dimensions and/or different relative adjacent spacings relative to the interlocking elements on the floor surface (p. 4, lines 1-13; Fig. 1).

By forming the carpet insulation system in this manner, both the connection between the closing element and the carpet backside loopless material 5 and the connection between the closing element and the floor loopless material 21 are releasable. The differences between the interlocking elements on the carpet surface and on the floor surface provide different connection strengths at each of the respective interfaces to facilitate the desired removable (p. 4, lines 1-13).

6. Grounds for Rejection to be Reviewed on Appeal

Claims 15 and 16 stand rejected as being unpatentable under the judicially created doctrine of obviousness type double patenting over claim 1 of co-pending Application No. 09/601,279.

Claims 10-25 and 27 stand rejected as being unpatentable under 35 U.S.C. § 112, first paragraph for reciting "said interlocking elements on said carpet side having at least one of different shapes, different dimensions and different relative spacings relative to said interlocking elements on said floor surface" on the ground that the specification fails to describe such subject matter in a way to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Claims 10-14, 19-25 and 27 stand rejected as being unpatentable under 35 U.S.C. § 103 over DE 195 32 685 to Leopold in view of DE 196 46 318 to Hammer, U.S. Patent No. 5,753,336 to Stull and U.S. Patent No. 6,298,624 to Pacione.

Claims 10-14, 19-25 and 27 stand rejected unpatentable under 35 U.S.C. § 103 over U.S. Patent No. 6,298,624 to Pacione in view of DE 196 46 318 to Hammer.

7. Argument

A. The Provisional Double Patenting Rejection Is Untenable
for Failing to Consider Limitations of Parent Claims

Claims 15 and 16 are provisionally rejected on the grounds of obviousness-type double patenting over claim 1 (presumably intended to refer to claim 7) of co-pending application No. 09/601,279. The rejection cannot be based on claim 1 of that co-pending application since that claim 1 has been cancelled.

Claims 15 and 16, being dependent upon claim 10 (indirectly) include the limitations of claim 10, which limitations admittedly patentably distinguish claim 1 (or 7) of the co-pending application. Specifically, the co-pending application is distinguished by the recitation of the protruding interlocking elements on each of the two opposite surfaces of the closing element, with the elements on the different surfaces having different shapes, dimensions or relative spacings.

Since the statement of the final rejection refers to claim 1 (the sole independent claim of the original co-pending application), claim 1 has been cancelled and claim 7 is presently the sole independent claim of that co-pending application, the double patenting rejection will be

considered relative to that claim 7. The double patenting rejection cannot be based on a cancelled claim.

Claim 7 of the co-pending application presently reads as follows:

7. A floor carpet installation system, comprising:
a carpet having a nap side forming a useful surface thereof and having a backside opposite said nap side;
a loopless material fixed on said backside of said carpet; and
a micro-adhesive closing component fixable to a floor and having upwardly protruding mushroom-shaped interlocking elements on a carrier, said interlocking elements having fingers with mushroom-shaped heads at ends thereof remote from said carrier interlockingly engaged with said loopless material, said heads having concave depressions on top surfaces thereof receiving adhesive to provide an additional connection with said backside of said carpet.

For this obvious-type double patenting, the Examiner must present a prima facie case that claims 15 and 16 of this application are merely an obvious variation of the invention claimed in the co-pending application. In re Kaplan, 789 F.2d 1574, 229 USPQ 678 (Fed. Cir. 1986). See also, e.g., Ex parte Davis, 56 USPQ 2d 1434 (B.P.A.I. 2000) (non-precidential). Such rejection is only appropriate when the claimed subject matter is not patentably distinct from the claims of the other patent or patent application so as to provide an unjustified extension of the patent term. General Foods Corp. v. Studiengesellschaft Kohle mbH, 972 F.2d 1272, 23 USPQ2d 1839 (Fed. Cir. 1992). M.P.E.P. § 804. Since both applications were filed on the same day, no unjustified extension of the patent term is possible.

Claim 7 of the co-pending application only recites a micro-adhesive closing component with upwardly protruding interlocking elements, and thus, only recites interlocking elements on one surface of the carrier. No portion of claim 7 recites or renders obvious interlocking elements on each of the two opposite surfaces of the closing element or interlocking elements having different shapes, dimensions and spacings on the opposite surfaces. These two features are

recited in claim 10 of this application upon which claims 15 and 16 indirectly depend. Because of this dependency, claims 15 and 16 include these features, which must be considered. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). These features are not treated in any manner in the final rejection. The mere recitation of some common features fails to inadequately provide a prima facie case of obviousness, as required. The failure of the rejection to treat all of the limitations of the claims in issue and the failure to reject claim 10 for double patenting render the double patenting rejection untenable .

Accordingly, this provisional obviousness-type double patenting rejection is untenable and should be reversed.

B. Rejection Under 35 U.S.C. § 112 Is Untenable
Since Claimed Features are Adequately Disclosed

Claims 10-27 are rejected under 35 U.S.C. § 112, first paragraph, on the ground that the specification does not adequately disclose interlocking elements having one of different shapes, different dimensions and different relative adjacent spacings on the opposite surfaces of the closing element.

However, such different spacings are clearly illustrated in Fig. 1, as admitted by the Examiner in the October 21, 2003 Interview Summary. The drawings need not illustrate all embodiments covered by the claim. The different shapes, dimensions and/or spacings are clearly recited in claim 1 (last two lines) as modified in the Preliminary Examination, and are discussed in the second full paragraph of page 2 of the modified sheets. Such feature is also described on page 3, lines 3-5, of the substitute specification.

The claim need not be limited to a single embodiment, particularly the preferred embodiment of Fig. 1. The drawings are merely one practical example of the invention and need only show a reasonable number of species (here one) to support a genus claim where the technology is predictable. Lampi Corp. v. American Power Products Inc., 228 F.3d 1365, 1378, 56 USPQ2d 1445, 1455 (Fed. Cir. 2000). See also, Moba B.V. v. Diamond Automation Inc., 325 F.3d 1306, 66 USPQ2d 1429 (Fed. Cir. 2003).

Thus, this recitation in claim 10 is adequately supported in the application and is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Also, this claim 10 recitation allows one skilled in the art to visualize or recognize the identity of the claimed subject matter, particularly since the pertinent art is predictable.

C. Rejections of Claim 10 Under 35 U.S.C. § 103
Do Not Provide Prima Facie Case of Obviousness

Claims 10-14 and 19-27 stand rejected under 35 U.S.C. § 103 as being unpatentable over DE 195 32 685 to Leopold in view of DE 196 46 318 to Hammer, U.S. Patent No. 5,753,336 to Stull and U.S. Patent No. 6,298,624 to Pacione. The Leopold patent is cited for a floor covering 1 having a lower felt layer 2, and an underlayer glued to the floor substrate 5 that engages the lower felt layer 2. The Hammer patent is cited for the use of hooks with concave depressions. The Stull patent (Figs. 7 and 8) and the Pacione patent (Fig. 31) are cited for the use of a closing element having hooks on each of its two sides to provide an attachment between a floor substrate and a carpet substrate. In support of the rejection, it is contended that it would be obvious to form the Leopold hooks as disclosed in the Hammer patent and to use a double-sided hook and

underlay material in view of the Stull and Pacione patents. The use of hooks of different shapes, dimensions or spacings on the two surfaces is considered obvious without citation of evidence in support thereof.

However, this combination of four patents is unduly complex indicating the claimed invention is non-obviousness. Also, the different shapes, dimensions or spacings is not obvious without any teaching thereof.

Claims 10-14 and 19-27 are also rejected under 35 U.S.C. § 103 as being unpatentable over the Pacione patent in view of the Hammer patent. Figure 31 of the Pacione patent is again relied upon for allegedly disclosing a double-sided hook anchor sheet. In support of the rejection, it is contended it would be obvious to use the Hammer hook configuration on the Pacione anchor sheet. Again, it is contended that it would be obvious to have the hooks on the opposite surfaces with different shapes, dimensions or spacings without citation of evidence in support thereof.

These two rejections under 35 U.S.C. § 103 are improper since no evidence of record supports the contention that it would be obvious to provide different hook arrangements on the opposite sides of the closure element or anchor sheet. The only suggestion for providing these differences comes from the instant application which has a significant advantage resulting from the difference, i.e., the different connection strengths at the two interfaces to facilitate the removal between the carpet and the closing element or between the closing element and the loopless material fixable to the floor.

The Leopold DE patent discloses a carpet installation system having an underlayer 4 glued to the floor surface 5. Underlayer 4 has a plurality of hook or mushroom formed interlocking elements which extend upwardly from its upper surface, and engage a felt layer 2

attached to the undersurface of carpet 1. The felt layer 2 is fixed to the underside of carpet layer 1.

Since the Leopold underlayer 4 only has interlocking elements extending upwardly from its upper surface, it does not have or render obvious the use of a closing element in a carpet installation system having interlocking elements extending from each of the two opposite surfaces of the closing element. Particularly, it does not disclose a micro-adhesive closing element having different interlocking element configurations on each of its two opposite surfaces to provide different connections with two different loopless materials. In the present claimed invention, different removable connections are provided between the carpet and the adhesive closing element and between the adhesive closing element and the floor loopless material.

The German Hammer patent is only cited in connection with the micro-adhesive closing element having hooks with concave depressions in their tops. It is not cited relative to the above discussed Leopold DE patent deficiencies regarding the interlocking elements on both sides and regarding the different configurations on both sides of the adhesive closing element.

The Stull patent discloses a removable underlay 60 for rugs having a firm layer 16 with loop or needle punched material 62 on one side attachable to hook material 65 and with nibs 26 on an opposite side attachable to filaments 32' of carpet C'. While loop material 62 may be viewed as having interlocking elements, nibs do not constitute interlocking elements configured as fingers with thicknesses at their free ends. Thus, the Stull patent does not teach interlocking elements on opposite surfaces of a closing element, as claimed in this application.

The Pacione patent, in Fig. 31, discloses an anchor sheet module 219 with an upper layer 223 having hooks on its upper surface 220 and its lower surface 224. However, the hooks on the upper and lower surfaces appear to be identical. No portion of the Pacione patent is cited as

disclosing that the hooks on the upper and lower surfaces have different shapes, dimensions or spacings as claimed. The Hammer patent, as noted above, does not supply this deficiency in the Pacione patent.

When no reference discloses a feature of a claim relied on to distinguish the prior art, there can be no suggestion to modify the prior art to contain that feature. In re Civitello, 339 F.2d 243, 144, USPQ 10 (C.C.P.A. 1964). As stated in W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 220 USPQ 303, 311 (Fed. Cir. 1983), there must be something in the teachings of the cited patents to suggest to one skilled in the art that the claimed invention would be obvious. Here, there is no teaching in the Stull and Pacione patents, or in any other cited patent, of the claimed interlocking elements of different spaces, dimensions or spacings on the opposite surfaces of the closing element. Thus, the rejection is not adequately supported by a clear factual basis, as required. In re Warner, 379 F.2d 1011, 154 USPQ 173 (C.C.P.A. 1967).

Accordingly, claim 10 is patentably distinguishable over the cited patents.

D. Dependent Claims are Further Distinguished

Claims 11-27, being dependent upon claim 10 are also allowable for the above reasons. Moreover, these dependent claims recite additional features further distinguishing them over the cited patents.

(1) Claim 11

Claim 11 is further distinguished by the recited mushroom-shaped heads.

(2) Claim 12

Claim 12 is further distinguished by the recited plate-shaped heads.

(3) Claims 13 and 14

Claims 13 and 14 are further distinguished by the recited concave depressions.

(4) Claims 15-16

Claims 15 and 16 are further distinguished by the recited adhesive in the depressions.

(5) Claims 17-18

Claims 17 and 18 are further distinguished by the adhesive having an acrylate base.

(6) Claim 19

Claim 19 is further distinguished by the loopless material being a felt.

(7) Claim 20

Claim 20 is further distinguished by the loopless material being a fleece.

(8) Claim 21

Claim 21 is further distinguished by the loopless material being a fabric.

(9) Claim 22

Claim 22 is further distinguished by the loopless material being a woven textile.

(10) Claim 23

Claim 23 is further distinguished by the loopless material being a non-woven textile.

(11) Claim 24

Claim 24 is further distinguished by the loopless material being a synthetic material.

(12) Claim 25

Claim 25 is further distinguished by the loopless material being a needle punched felt.

(13) Claim 26

Claim 26 is further distinguished by the loopless material being a tuft.

(14) Claim 27

Claim 27 is further distinguished by the loopless material being footstep-sound-absorbing properties.

9. Conclusion

In view of the foregoing, Applicant-Appellant submits that (1) the rejection of claims 15 and 16 for obvious type double patenting, (2) the rejection under 35 U.S.C. § 112, first paragraph, of claims 10-25 and 27, (3) the rejections under 35 U.S.C. § 103 of claims 10-14, 19-25 and 27 are untenable. Thus, Applicant-Appellant requests that these rejections be reversed.

Respectfully Submitted,



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APPENDIX A - COPY OF CLAIMS ON APPEAL

10. A floor carpet installation system, comprising:
 - a carpet having a nap side forming a usable surface thereof and having a backside formed of a carpet loopless material opposite said nap side;
 - a floor loopless material fixable to a floor surface; and
 - a micro-adhesive closing element having opposite carpet and floor surfaces, each of said surfaces having protruding interlocking elements, said elements on said carpet and floor surfaces interlocking with said carpet and floor loopless materials, respectively, said interlocking elements being configured as fingers with thicknesses at free ends thereof, said interlocking elements on said carpet surface having at least one of different shapes, different dimensions and different relative adjacent spacings relative to said interlocking elements on said floor surface.
11. A floor carpet installation system according to claim 10 wherein said thicknesses of said interlocking elements comprise mushroom-shaped heads.
12. A floor carpet installation system according to claim 10 wherein said thicknesses of said interlocking elements comprise plate-shaped heads.
13. A floor carpet installation system according to claim 11 wherein said heads have concave depressions on tops thereof.
14. A floor carpet installation system according to claim 12 wherein said heads have concave depressions on tops thereof.

15. A floor carpet installation system according to claim 13 wherein
said depressions in said heads on said interlocking elements on at least one of said
surfaces receives adhesive to provide an additional connection with one of said carpet loopless
material and said floor loopless material.

16. A floor carpet installation system according to claim 14 wherein
said depressions in said heads on said interlocking elements on at least one of said
surfaces receives adhesive to provide an additional connection with one of said carpet loopless
material and said floor loopless material.

17. A floor carpet installation system according to claim 15 wherein
said adhesive comprises an acrylate base.

18. A floor carpet installation system according to claim 16 wherein
said adhesive comprises an acrylate base.

19. A floor carpet installation system according to claim 10 wherein
said loopless materials comprise felt.

20. A floor carpet installation system according to claim 10 wherein
said loopless materials comprise fleece.

APPENDIX B - EVIDENCE

None



APPENDIX C - RELATED PROCEEDINGS

None